

**S/N 10/038,766**  
**Our Ref. No. 659-919**  
**Client Ref. No. 16936**

## **REMARKS**

### **Remarks About the Rejections Under 35 USC 112(2):**

Applicants gratefully acknowledge the Examiner's statement in the Office Action mailed May 17, 2006 that claims 17-20 were allowed, and further that claims 21, 27 and 28 would be allowed if rewritten to overcome a rejection of claim 21 under 35 USC 112(2). In response, Applicants have amended claim 21 to recite "the transfer assembly," which has proper antecedent basis.<sup>1</sup> Accordingly, the rejection under 35 USC 112(2) has been overcome and claims 21, 27 and 28 are in condition for allowance.

### **Remarks About the Prior Art Rejections:**

The Examiner has rejected claims 2, 3, 6-8 and 24-26 under 35 USC 103 as being obvious over USP 5,830,296 to Emenaker alone, or further in view of USP 5,716,478 to Boothe. Applicants respectfully submit that all of the claims are allowable for the reasons set forth below.

#### **Claims 2, 3, 6-8 and 24-26:**

Claim 3 recites that the "recessed portion has a fixed, non-changeable generally *hour-glass shape*." As set forth by Applicants, a "generally hour-glassed shape" refers to the portion being "generally wider at its end portions 72, 74 than at its central portion 76" (Specification at 10, lines 17-19, Figure 5A).

Contrary to the Examiner's assertion, "portions 58 and 68" of Emenaker do not have a "fixed, non-changeable generally hour-glass shapes" (Office Action at 2 referring to Figure 3 of Emenaker). Rather, the shapes of portions 58 and 68 are exactly the *opposite* of an hour-glass shape – those portions are enlarged and

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<sup>1</sup> Applicants have made a similar amendment to claim 3.

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protruding at a middle region thereof rather than being narrowed at the middle region. Since Emanaker fails to disclose or suggest all of the claim 3 recitations, the Examiner's rejection should be withdrawn on this basis alone.

The Examiner, however, also acknowledges that "Emenaker et al. [does] not teach at least one aperture in the outer surface of either of bodies 52 and 54 and extending through the respective body for communication with a vacuum source" (Office Action at 3). To satisfy this deficiency, the Examine asserts that "embossing rollers conventionally include a vacuum source in communication with the rollers (i.e., carrier bodies) having apertures all along in the outer surface thereof to help keep the web fed therethrough aligned during the embossing operation" (Office Action at 3). Applicants respectfully submit that such an assertion is improper under MPEP 2144.03.

In particular, "Official notice unsupported by documentary evidence," as is the case here, "should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known" (MPEP 2144.03). That simply is not the case here. Not all embossment rolls are configured with apertures, and the particular configuration of any such roll should be disclosed so that Applicants can assess whether such a configuration can be properly combined with Emenaker.

Moreover, if official notice is taken, "the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable" (MPEP 2144.03). In the present case, for example, the Examiner's assertion does not specify what type of embossment rolls incorporate the noted aperture, where the aperture is formed relative to the embossment elements,<sup>2</sup> etc. Accordingly, Applicants cannot

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<sup>2</sup> For example and without limitation, the Examiner has not provided where in the

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assess whether there would be a proper motivation or suggestion to combine the apertures of such “conventionally” known rollers with the rollers of Emenaker.

Moreover, and notwithstanding these deficiencies, Emenaker actually teaches away from the incorporation of any apertures. In particular, Emenaker expressly discloses that:

The components for the absorbent article are preferably provided in the form of a *continuous web or laminate* (except for [certain internal elements that] are in discontinuous patches or pieces). *When the components are supplied to the apparatus 50 shown in FIG. 3, the components will be arranged in a laminate* with the web of topsheet material facing downward. The assembled components are *then fed into the nip 80* between the die roll 52 and the anvil roll 54. *When the components of the absorbent article are fed into the nip 80* between the die roll 52 and the anvil roll 54, the heated sealing member 56 forms a perimeter seal 40 at least partially around the perimeter of at least some of the components, and the raised portions 62 on the embossing surface 60A simultaneously form a pattern of embossments 34 into at least some of the components” (Emenaker at Col. 5, lines 41-56) (emphasis added).

In this way, the rollers of Emenaker act on *a web passing through the nip 80* between the rollers -- *not discrete elements* (or even a web) being carried by a carrier body as recited in claim 3. As such, Emenaker does not disclose the need or desirability of having vacuum apertures formed in one or both of the rollers. Indeed, if a vacuum were applied to the rollers of Emenaker, the web would tend to adhere to one or both of the rollers rather than passing through the nip. For these additional reasons, there is no suggestion to modify Emenaker as suggested by the Examiner,

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“common knowledge” it is disclosed that the apertures are formed in the “top portion of said outer surface” (claim 24) or the “recessed portion of said outer surface” (claim 25) (see Office Action at 3).

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even if the proposed modification satisfies the requirements for taking official notice or relying on common knowledge.

**Conclusion:**

For all of the reasons set forth above, all of the claims are in condition for allowance and notice to that effect is earnestly solicited. No fees are believed to be due in connection with this amendment. If for any reason this application is not considered to be in condition for allowance and an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

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By:

Respectfully Submitted,

  
Andrew D. Stover  
Reg. No. 38,629  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE LTD.  
Post Office Box 10395  
Chicago, Illinois 60610  
(312) 321-4200